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2 IN THE UNITED STATES BANKRUPTCY COURT

3 FOR THE EASTERN DISTRICT OF NEW YORK

4 -----x

5 In re:

6 BRICKCHURCH ENTERPRISES, INC.,

7 Debtor.

8 Chapter 11

9 Case No. 22-70914-ast

10 -----x

11

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13 VIDEOTELECONFERENCED DEPOSITION OF:

14 BRETT COHEN

15 Westport, Connecticut

16 Tuesday, August 30, 2022

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22 Reported by:
Aydil M. Torres, CSR

23 JOB NO. J8568771

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August 30, 2022

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2:08 p.m.

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VTC deposition of

7

BRETT COHEN, held at 21 Charles

8

Street, Westport, Connecticut,

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pursuant to Notice, before Aydil M.

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Torres, a Notary Public of the

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State of New York.

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2 A P P E A R A N C E S:

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4 SIMMONS LEGAL, PLLC

5 Attorneys for Debtor

6 1330 Avenue of the Americas, Suite 23A

7 New York, New York 10019

8 BY: CAMISHA SIMMONS, ESQ.

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11 HAYNES & BOONE, LLP

12 Attorneys for Attorneys for JGB Partners,

13 LP, JGB Capital, LP, JGB (Cayman) Ancona,

14 Ltd., JGB Plymouth Rock, LLC and their

15 affiliates

16 30 Rockefeller Plaza, 26th Floor

17 New York, New York 10112

18 BY: RICHARD S. KANOWITZ, ESQ.

19

20 ALSO PRESENT:

21 Martha Wyrick

22 William Birmingham

23 Michael Freyberg

24 Leslie Thorne

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2 THE REPORTER: My name is
3 Aydil M. Torres, a New York State
4 notary public and certified
5 shorthand reporter. This
6 deposition is being held via
7 videoconferencing equipment. The
8 witness and reporter are not in the
9 same room. The witness will be
10 sworn in remotely pursuant to
11 agreement of all parties. The
12 parties stipulate that the
13 testimony is being given as if the
14 witness was sworn in person.

15 B R E T T C O H E N,
16 called as a witness, having been
17 duly sworn by a Notary Public, was

18 examined and testified as follows:

19 THE REPORTER: Please state
20 your name for the record.

21 THE WITNESS: Brett Cohen.

22 THE REPORTER: Please state
23 the address you are currently
24 located.

25 THE WITNESS: 21 Charles

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2 Street, Westport, Connecticut
3 06880.

4 EXAMINATION BY

5 MS. SIMMONS:

6 Q. Good afternoon, Mr. Cohen. I am
7 Camisha Simmons, counsel to Brickchurch
8 Enterprises, Inc.

9 Do you understand that you are here
10 for a deposition for Brickchurch Enterprises,
11 Inc., the bankruptcy case?

12 A. I do.

13 Q. And you also understand that this
14 relates to the property 366 Gin Lane?

15 A. I do.

16 Q. And is this your first deposition?

17 A. Ever?

18 Q. Ever.

19 A. No.

20 Q. And is this your first virtual
21 deposition?

22 A. I think so.

23 Q. Is there anyone in the room with
24 you right now?

25 A. No.

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6

1 Brett Cohen

2 Q. And have you gotten rid of all
3 distractions during this deposition?

4 A. Yes.

5 Q. Is there a delay in the audio?

6 A. Not for me, no.

7 Q. So let me know, at any time, if you
8 need to take a break, and we may periodically
9 take breaks during your deposition.

10 At the moment, are you currently
11 taking any medications that will prevent you
12 from providing complete, truthful and
13 accurate testimony today, or that may affect

14 your memory?

15 A. No.

16 Q. Do you have any emotional or
17 physical conditions that would prevent you
18 from providing complete, truthful and
19 accurate testimony today or that may affect
20 your memory?

21 A. No.

22 Q. Mr. Cohen, where do you currently
23 reside?

24 A. 26 Broadview Road, Westport,
25 Connecticut 06880.

↑

7

1 Brett Cohen

2 Q. And is that where you are currently
3 at?

4 A. No.

5 Q. Where are you located right now?

6 A. 21 Charles Street, Westport,
7 Connecticut 06880.

8 Q. So you are here with respect to
9 your role with JGB. What is your role with
10 JGB?

11 A. I am a partner.

12 Q. And as a partner, what do you --
13 what do you do as a partner at JGB?

14 A. I am in charge of oversight of
15 investments and interactions with investors.
16 So I'm, along with a partner, I really run
17 the fund.

18 Q. And when you say, "run the fund,"
19 is your role similar to a CEO?

20 A. Analogous, yes.

21 Q. And how long have you been with
22 JGB?

23 A. I founded it in 2005.

24 Q. Before you were with JGB, what role
25 did you have?

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8

1 Brett Cohen

2 A. I was a portfolio manager at a
3 hedge fund called Elliot Associates.

4 Q. How long were you with them?

5 A. Approximately, eight years.

6 Q. And before then, how many -- I
7 guess, overall, how many jobs have you had, I
8 guess, post -- you went -- you did go to
9 college, correct?

10 A. I did.

11 Q. Okay, after college, how many
12 positions have you had?

13 A. Very few.

14 Q. And so when you say, "very few," so
15 Elliot Associates, JGB, and what was before
16 Elliot Associates?

17 A. I went to law school.

18 Q. Did you practice law?

19 A. Not really. Only for the summers.

20 Q. So you have been, I guess, in
21 investment -- in the investment industry ever
22 since you graduated from law school?

23 A. Correct, from 1997.

24 Q. So with respect to JGB, how would
25 you describe JGB, the company, and what it

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9

1 Brett Cohen

2 does?

3 A. It's an investment firm, private
4 investment firm, yeah.

5 Q. And who are your clients?

6 A. Our limited partners are a mix of
7 high net worth individuals, some

8 institutions, and employees of the firm.

9 Interaga -- I mean there are other stuff, but
10 that's a broad description of the investors.

11 Q. And how large or what's the amount
12 or the value of the assets that you have
13 under management?

14 A. Approximately, \$250 million in
15 assets under management.

16 Q. And in terms of your business model
17 or investment strategy, what sort of
18 investments do you make on behalf of your
19 investors?

20 A. We're primarily a credit firm. So
21 that is, we don't primarily do equities, and
22 we're, I guess, what's conventionally known
23 as a "direct lender," so opportunistic
24 lender. So interesting opportunities come
25 through our door and we look at them, and we

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10

1 Brett Cohen

2 are primarily a -- most of our investments
3 have a fixed income component.

4 Q. And when you are deciding when to
5 loan or how to loan, what are the factors

6 that go into whether or not JGB makes a loan
7 to a company?

8 A. It's multivariant.

9 Q. Could you expound on -- when you
10 say, "multivariant," what do you consider
11 when determining whether or not to make a
12 loan to a company?

13 A. So there's many facets of it. It's
14 almost like asking what do you consider when
15 you are thinking about litigation. So it's a
16 big conversation. But to synopsise, first
17 and foremost, whether we think there's asset
18 coverage, if we think we're going to get
19 repaid. Next, the rate of return, right, I
20 think in it's most distilled version, that's
21 really what we're up -- considering, we're
22 thinking about. Are we covered by assets,
23 can we get repaid, our rate of return, and --
24 oh, and then as a third part, is there any
25 potential upside. Sometimes this doesn't

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11

1 Brett Cohen
2 pertain to what I call Gin Lane, you may call
3 it Brickchurch or what have you, but

4 sometimes we have deals where there's some
5 equity upside where it's a convertible or
6 there's warrants or some such thing, and we
7 might consider that as well, but that wasn't
8 the case here.

9 Q. When you say there's upside,
10 there's convertibles, there's warrant, you
11 mean convertible from debt to equity?

12 A. Yes, conventionally, that's how you
13 would think of a convertible loan.

14 Q. So you would -- you also -- not
15 only are you a lender, you do take an equity
16 stake sometimes in some of your investments?

17 A. We have the option to convert into
18 equity in some of our investments, that's
19 correct.

20 Q. So what percentage of your
21 portfolio is -- involves positions where you
22 have an equity stake?

23 A. Well, I want to just make sure it's
24 an -- it's -- it's a potential equity stake.
25 So we do a loan and we have the option to

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2 convert into equity. So it's not an equity
3 state strictly speaking. It's an option for
4 an equity stake. What percent? If you --
5 what percentage of our deals are convertible
6 loans? I am going to guess, twenty-five
7 percent.

8 Q. Twenty-five percent are convertible
9 loans. Have you -- what -- what triggers a
10 conversion under your agreements?

11 A. Oh, yeah, so I don't know -- and I
12 am not being disrespectful, I just don't know
13 how much you know about convertible loans.
14 I've lived with them for twenty-five years.
15 So in the convertible loan market, which is a
16 multi trillion dollar market, an issuer, a
17 borrower issues a piece of debt. The
18 investor is the owner of that piece of debt,
19 and if the owner wishes, the owner can
20 convert that debt into equity. What converts
21 -- what -- in ninety-nine times out of
22 one-hundred, the thing that determines
23 whether we -- whether we or anyone else would
24 convert into equity is whether the equity
25 value -- and by the way, this is in



1 Brett Cohen

2 ninety-nine times out of a hundred with a
3 public company, so whether the equity value
4 has gone above your conversion price. So you
5 have a \$100 loan, it's convertible at a price
6 of \$10. If the stock said \$5, you wouldn't
7 convert. That would be money losing. If the
8 stock said \$20, you could convert at \$10, and
9 if you so choose, you can sell stock at \$20.
10 That's money making. So for me and the
11 entire rest of the tens of thousands of
12 people who have done converts, convertible
13 loans, the primary thing that determines
14 whether one converts -- not the exclusive
15 thing, but really the driving thing is
16 whether the stock is in the money.

17 Q. And does JGB have any ownership in
18 equity in any company, at the moment?

19 A. "Does JGB have any ownership of
20 equity in any company, at the moment?" Yes.

21 Q. Okay. What is the exposure, what's
22 the percentage of that equity, in terms of --
23 in relation to your overall entire portfolio?

24 A. De minimus.

25 Q. Do you also loan to individuals?

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14

1 Brett Cohen

2 A. Rarely. The large majority of our
3 portfolio is with corporates. Sometimes
4 there's a little bit of a blending --
5 blurring of the lines of what's an individual
6 or what's a corporate. So a public corporate
7 company is obvious. A private company with
8 250 people is obvious. But sometimes there
9 will be an individual who has a lot of stuff
10 going on, and they might be something like a
11 corporate. But the majority of our stuff is,
12 I would say, eighty -- eighty percent, to my
13 mind, is with what you would, properly
14 speaking, call a corporate. There's some
15 places where that's somewhat ambiguous. So,
16 for example, with Ms. Blouin, she has a
17 corporate -- right, a corporation. I don't
18 know if it's an LLC or what have you. So is
19 that a person or a corporate? It -- for me,
20 as a lay person, it's kind of hard to
21 articulate.

22 Q. So I guess when you do have an

23 actual legal entity created, the entity that
24 you loan to would be, let's say in this case,
25 Brickchurch Enterprises, Inc., the borrower

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1 Brett Cohen

2 under your loan would be Brickchurch
3 Enterprises, Inc., and not any individual
4 that had an ownership piece in the property
5 or in the company?

6 A. That's generally -- I mean, that's
7 generally the case. I am searching my mind
8 to think of an example. Have we ever done
9 something with a person straight up, Joe
10 Schmoe, without any kind of corporate entity.
11 It would be a very small minority of our
12 deals. I will say, we -- while the large
13 majority of our deals are with corporates,
14 and we very, very, very rarely, to my mind,
15 do a deal directly with an actual person, we
16 sometimes get personal guarantees from
17 people.

18 Q. And when -- the loans that you take
19 out, what is the typical loan to value ratio?

20 A. It doesn't really work like -- so

21 we don't have a stated loan to value ratio.
22 We want to make sure that we're covered. I
23 would say, yeah, we don't have a policy that
24 says, "Oh, gee, we loan at sixty percent of
25 loan to value." We look at a loan and think

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16

1 Brett Cohen

2 in, you know, in a reasonable bad case, would
3 we be -- would we be covered by the
4 collateral.

5 Q. Okay, so in this case, you loaned
6 for -- with respect to Brickchurch
7 Enterprises, Inc., you made a \$26 million
8 loan?

9 A. That's correct.

10 Q. And the loan to value was fifty
11 percent?

12 A. Uh-huh, and we felt that -- I -- I
13 don't know, and you don't know, what the --
14 and Ms. Blouin doesn't know what this place
15 is worth. The market will say. What we felt
16 is that it was likely worth more than our
17 loan.

18 Q. And you didn't use a loan to value

19 ratio when making this loan to Brickchurch
20 Enterprises, Inc.?

21 A. That's correct. We just felt that
22 it was likely worth more than our loan.

23 Q. And so you never looked at loan to
24 value, other than you wanted to know if the
25 value was more than the 26 million?

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17

1 Brett Cohen

2 A. We never -- we don't have a policy
3 that says, "We have to loan at sixty-two and
4 a half percent of loan to value." We did not
5 do that here, and I don't believe at any
6 point we said, "Oh, our loan is 26, and our
7 loan to value is X percent." Did we look --
8 I just want to -- because I think you kind of
9 asked me two questions there. Did we look?
10 So did we have a specific loan to value, no.
11 Did we look, and did we feel that the value
12 was more than what we were lending, yes.

13 Q. And the collateral under both of
14 those -- under that loan was both for 366 Gin
15 Lane, and a second lane on 376 Gin Lane?

16 A. Yes.

17 Q. And are you familiar with the
18 forbearance agreement that you entered into
19 with respect to that lone?

20 A. I have a, you know, rough
21 familiarity with it. It was several years
22 ago, but I remember that, you know, along
23 with not paying -- Ms. Blouin, along with not
24 paying her prior lenders, and employees, and
25 contractors, and lawyers, and brokers, and

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1 Brett Cohen
2 taxes, she ultimately didn't pay us, and so
3 we entered into a forbearance agreement with
4 her. Interestingly enough, I think one of
5 the piece of collateral was I think we had an
6 interest reserve, if memory serves me right,
7 and I also think that as soon as the interest
8 reserve ran up, she didn't pay us, but that's
9 just recollection. So, yes, so I -- I do
10 recall that she defaulted to us, as she has
11 defaulted to nearly everyone else in her
12 life, and then we, in an effort to, you know,
13 work things out, we entered into a
14 forbearance agreement.

15 Q. Okay, so Mr. Cohen, I have --
16 popped up on the screen is the forbearance
17 agreement. It was dated July 11, 2019.

18 So under paragraph 4.4 under the
19 forbearance agreement -- do you see that?

20 A. "If the borrowers repay the loan
21 and all of the other outstanding obligations
22 under the note any time after" -- "shall be
23 \$2 million." Yes, I see that.

24 Q. And so this exit charge, because
25 you -- what is -- what is this exit charge?

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1 Brett Cohen

2 A. Just -- I'm just trying to refresh
3 myself. This is a charge that the State
4 Court approved and the referee approved? Is
5 that -- I am just trying to refresh my memory
6 here. Oh, they did. I think they did. So
7 -- so -- so this charge, you know, sanctified
8 by the State Court and referee, I think this
9 was -- this is my surmise, I am only seeing
10 one -- you know, you are showing me one
11 section of this loan, of the amendment I
12 should say, or forbearance agreement, your

13 client defaulted, and this is my surmise; in
14 the lending industry, if someone defaults and
15 then asks for a forbearance, sometimes people
16 get consideration for doing that, rather than
17 foreclosing immediately. So this is -- just
18 looking at this one section, my surmise is
19 here that in consideration for a forbearing,
20 we probably asked for some form of
21 consideration, and this may have been that.

22 Q. And is an exit charge typical
23 charge under your forbearance agreements for
24 JGB?

25 A. Not only -- so it is -- is it

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1 Brett Cohen
2 typical, in general? Sometimes it is. And
3 sometimes it is, not only for us, for the
4 industry broadly, and then is consideration
5 typical when somebody defaults and you
6 forbear, I would say it's nearly universal.

7 Q. And how did you determine the
8 amount of the exit charge?

9 A. I don't recall.

10 Q. Does JGB have a formula or --

11 A. No.

12 Q. -- some sort of standard for
13 determining that amount?

14 A. No.

15 Q. So that amount isn't tied to JGB's
16 anticipated loss?

17 MR. KANOWITZ: Objection to
18 form; you can answer.

19 A. I quibble with your premise about
20 an "anticipated loss." I would just say, the
21 -- to my mind, an exit charge is -- what it's
22 tied to is the fact that your client
23 defaulted to us, and was defaulting to people
24 left, right, and center, and asked us to
25 forbear, and we did for some of period time.

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21

1 Brett Cohen

2 And so we, like, I think, any other
3 counterparty, asked for some consideration
4 for that.

5 Q. There was no standard analysis or
6 formula for calculating the amount?

7 A. No, no.

8 Q. Okay. Do you -- I have another

9 screen. This is an e-mail that I am showing
10 you now, and the subject of that e-mail, if
11 you see -- do you see is "proposed JGB
12 payoff"?

13 A. Yes.

14 Q. And it looks like you were cc'd on
15 that e-mail?

16 A. Yeah. Do you have the rest of the
17 link beneath there?

18 MR. KANOWITZ: It's been
19 redacted for privilege.

20 THE WITNESS: I see.

21 Q. And this is a -- yeah, let me
22 clarify. This is a document that, you know,
23 if you see it says, "JGB," and has a Bates
24 number, it was produced - it was produced
25 during the discovery process in this

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22

1 Brett Cohen

2 litigation. So this is a document that you
3 did produce.

4 A. How do you -- forgive me, how -- do
5 you want me to call you Counselor Simmons?
6 Just tell me how I should refer to you and I

7 will.

8 Q. You can call me Ms. Simmons, you
9 know, Counselor Simmons.

10 A. Okay.

11 Q. Whatever.

12 A. So Counselor Simmons, can I just
13 have a minute -- if it's okay, if we just
14 slowly -- you asked me to --

15 Q. Sure. So you want me to start from
16 the top and --

17 A. I think I got -- yeah, yeah, that
18 part, I got.

19 Q. I will go back to the top. You got
20 that part, okay. And there's the redacted
21 portion.

22 A. Uh-huh.

23 Q. And then now we're here.

24 A. Okay. If we can keep going down,
25 that will be great. Uh-huh. Yeah, I mean,

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1 Brett Cohen

2 one thing that jumps out at me here is that
3 says \$21 million, and the amount -- this was
4 recently, no? This was, what? This was in

5 2022. So the amount owing to us at this
6 point was probably thirty -- in the high 30
7 millions. So, I mean, the first thing that
8 jumps out at me is -- it's a -- looking at
9 this quite quickly --

10 Q. Oh, I didn't ask you a question
11 yet, Mr. Cohen.

12 A. Oh, sure.

13 Q. You see the language, it says, I
14 actually don't -- this is from Hunter. "I
15 actually don't think we should engage on
16 this, even if it's real. Our position has
17 never been stringer or closer, and we are
18 getting close to 17 million of potential P&L
19 from the mark." And so "P&L" -- you are in
20 the industry -- is "profit and loss,"
21 correct?

22 A. Correct.

23 Q. So that would mean profit. So he
24 is speaking of the upside, correct, of the 17
25 million?

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24

1 Brett Cohen

2 A. That's to the best of my

3 understanding, yes.

4 Q. And so he is saying, even if this
5 proposal is real, this refinancing proposal
6 is real, we don't want to take it because
7 we're up 17 million, and we'd rather take the
8 profit?

9 A. No, I think you are missing --

10 MR. KANOWITZ: Objection.

11 Brett, let me jump in, before you
12 respond. Objection to form; you
13 can answer the question.

14 A. Yeah, so I think you're confounding
15 a couple of stuff. So I will just
16 disaggregate. So, first of all, the reason
17 that we wouldn't engage in the proposal is
18 because it's at a massive discount to what we
19 are owed. So if you scroll down, it was --
20 at the time we were probably owed close to
21 \$40 million, and the proposal, if I just
22 remember from what I briefly saw, was for
23 someone giving us, I don't know, \$22 million,
24 if I recall, and then some kind of paper. So
25 a -- I want to just be absolutely sure that

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1 Brett Cohen

2 you are not misunderstanding. This wasn't
3 someone offering to repay us our loan. This
4 was someone offering to repay us...

5 Q. They were offering to re --

6 MR. KANOWITZ: Please let
7 the witness finish his question --
8 I mean his answer to your question.

9 A. So this was someone offering to pay
10 us \$21 million, out of what was probably \$40
11 million at the time, and then get some paper.
12 So a bad deal. So if you go up to -- I think
13 that's incredibly important context for the
14 e-mail up above. Would we take this deal
15 that isn't what we're owed? Would we even
16 engage here? No. So that's part one. I
17 just want to make absolutely sure that you
18 understand, this was not somebody offering to
19 repay us our loan. This was someone offering
20 us a -- the -- not even the consolation
21 prize.

22 Q. But here -- continue, finish your
23 sentence.

24 A. So that's thing one. And then
25 thing two, the part about being up \$17



1 Brett Cohen

2 million from the mark, that's -- the point is
3 -- is that at that point, we felt that the
4 properties were close to being sold, and we
5 felt that if they were sold, you know, we
6 were likely to get full value between the two
7 properties, and so why would we take a subpar
8 deal when we were close to, you know, we had
9 already, I think at that point, won
10 foreclosure and were close to having an
11 auction.

12 Q. So you weren't willing to take that
13 21 million that Ms. Blouin would pay?

14 A. We weren't willing to enter into
15 negotiations with someone who had had twelve
16 unreal notions in the past, has defaulted to
17 everyone she's done business with, and
18 proposed paying us fifty cents on the dollar
19 in cash, no, that wasn't very exciting to us.

20 Q. So here -- in here there's another
21 e-mail and it's from you. You recognize that
22 as your e-mail address?

23 A. I do.

24 Q. And it's dated Thursday, July 25,
25 2019. It is to Ms. Blouin. And the subject

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1 Brett Cohen
2 is "process," and in this e-mail you're
3 informing Ms. Blouin that it's 90 days, or at
4 least you think it's 90 days into the final
5 maturity of the loan?

6 A. Yes, I think we had -- sorry, go
7 ahead.

8 Q. And in advance of the maturity
9 date, you have said, "It makes sense to just
10 start transfer of title of the property."

11 MR. KANOWITZ: Objection to
12 form; you can answer the question.

13 A. I mean are you saying that I said
14 it makes sense or I asked, does it?

15 Q. You say in this e-mail, does it --
16 it's -- you're inquiring regarding transfer
17 of title 90 days before maturity?

18 A. Yeah, did I ask your client if it
19 made sense to transfer title? Yes. Because
20 did I believe that she was going to default
21 in 90 days, I did, and I was correct. And by

22 the way, let me just, for your benefit, read
23 -- it seems sort of a waste to lose an entire
24 season with someone more transactional than
25 us also working on this, and also to rack up

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1 Brett Cohen
2 incremental legal fees, via foreclosure that
3 would be added to allegation. This is 2019.
4 It is now 2022, and do you know what's
5 happened? We have missed many seasons, and
6 the loan has gone up. So you're not asking
7 this question, but, yeah, it probably would
8 have made sense.

9 Q. So 90 days before maturity, you --
10 JGB was thinking about taking title to the
11 property?

12 A. Oh, we asked your client if she
13 wanted -- if she had no intention of
14 refinancing, or selling, and she had, to the
15 best of my knowledge, at this time, made no
16 efforts, after we had made our forbearance,
17 at this point, it was merely impossible that
18 she would get something done before our
19 maturity. So we asked, do you want to just

20 -- is it something you want to do to -- do
21 you want to keep your property? By the way,
22 I'd also point out, "we are perfectly happy
23 to live within our deal and wait until
24 maturity if that's what you prefer." So we
25 simply asked a question.

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1 Brett Cohen

2 Q. And at this time, were you speaking
3 with any potential purchasers of the
4 property?

5 A. I don't -- I don't know. I don't
6 believe so. People periodically called us up
7 and said, "Oh, you have this loan with Louis
8 Blouin, she defaults to everyone. She is in
9 default with you, you know, do you want to
10 talk about us buying it?" We would sometimes
11 get phone calls from people out of the blue.

12 Q. When you are saying "people" --

13 A. Yeah.

14 Q. -- who are "people"? Are they
15 brokers?

16 A. It would be brokers, funds. Every
17 now and then someone would call us up and

18 say, "Is this in default? Is it going to be
19 in default? Are you interested in selling
20 it?"

21 Q. And when you mention "brokers," do
22 you recall who those brokers are that would
23 call you and ask about the property?

24 A. There was a hodgepodge of them.
25 No, I mean, our -- maybe I recall some. But

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30

1 Brett Cohen

2 many -- over the years, many people have --
3 it's a fairly marque property, so many people
4 have called us up. I mean we generally don't
5 engage in long conversations with them. But
6 many people have called us up. People have
7 -- yeah, many people have called us up over
8 the years.

9 Q. You said you recall some. Who are
10 the "some" that you recall?

11 A. So...we spoke to -- so there's
12 three or four brokers who really do -- who do
13 a bunch of business out in that high-end
14 Hampton, and so they, over the years, called
15 us. So I remember there's Michaela

16 Keszler -- oh, also sometimes brokers who
17 were hired by Ms. Blouin, when Ms. Blouin
18 stiffed them, would call us up, or also when
19 -- and so I think -- I think over the years
20 we probably received a couple of phone calls
21 from -- this is -- Harold Grant, I may be
22 merging peoples' names. Someone named Procer
23 called us to complain. I think that she felt
24 that your client was insane and stiffing her.
25 Michaela Keszler we've avenue spoken to over

↑

31

1 Brett Cohen
2 the years. So that's some people that I
3 recall.
4 Q. So the specific names you recall
5 are Michaela Keszler, Harold Grant, and
6 Procer. Is that Anne Procer?
7 A. Yeah.
8 Q. And you say they were inquiring
9 about the property to purchase it?
10 A. Not from us. We couldn't sell it.
11 We -- we're just a note holder.
12 Q. Around this same time, you were
13 also asking Ms. Blouin if it made sense for

14 her to transfer ownership to JGB?

15 MR. KANOWITZ: Objection to
16 form; you can answer.

17 A. We didn't ask her to do it. We
18 asked her if she wanted to do it. On the
19 basis of her defaulting to everyone in her
20 life, including her lawyers, and her brokers,
21 and taxes, and not taking action -- clearly
22 not taking action that was going to avoid a
23 costly and lengthy foreclosure. We just
24 asked if she wanted to transfer -- if she
25 wanted to transfer title. I don't think

↑

32

1 Brett Cohen

2 there's some nefarious intent.

3 Q. So you were willing, if she wanted
4 to take title, to take title to the property?

5 A. Can you restate that?

6 Q. So if she would have said, "Sure, I
7 will transfer title 90 days before maturity,"
8 JGB would have taken title?

9 A. If it was okay with lawyers. I
10 mean this was just businessman conversation,
11 but it -- in retrospect, if I could have

12 taken title back then, and not had, you know,
13 three years, and untold dollars of expense,
14 would I have taken it then, I mean it's
15 conjecture, but I certainly would have
16 considered it.

17 Q. Okay, so there was a communication
18 -- I'm switching over to another e-mail.
19 This e-mail is from you, and it's dated May
20 28, 2019. So it was before that last e-mail.

21 A. Okay.

22 Q. And the subject is "amendment for
23 discussion purposes." And so I guess I will
24 give you a chance to read it. Let me know
25 when you need me to scroll down.

↑

33

1 Brett Cohen

2 A. If you could, yeah, that would be
3 great. You know, keep going, if you would.
4 Okay, do you have a chain of stuff before
5 that? Like what's this -- what that's
6 responding to?

7 Q. Well, this, obviously, is a
8 proposal from you, correct?

9 A. Yes, although it may be something

10 that may be responding to a proposal from
11 your client.

12 Q. Okay, on here, just looking at this
13 e-mail alone, you were -- you were taking --
14 willing to take equity, 50.25 million loan,
15 and you were going to take an equity piece
16 under this proposal?

17 MR. KANOWITZ: Objection to
18 form; you can answer it.

19 A. I'm sorry, can you point out where
20 it says, "an equity piece"?

21 Q. You were going to take -- you had
22 rights over the shares, and so you were
23 taking an interest, a security interest in
24 the stock of the company. You see that, the
25 pledge, the shares of the company in escrow?

↑

34

1 Brett Cohen

2 A. Yeah, I think you may be
3 misunderstanding the -- that's not an equity
4 piece, in the way it's traditionally
5 articulated. That's just if they default, we
6 could be on the board of -- I am presuming
7 here, just looking at this quickly. We

8 didn't have equity in the property. We were
9 -- had stock powers over the corporation. So
10 that --

11 Q. You were -- so this line here says,
12 "incurred" -- "JGB, as a result of taking
13 ownership of shares or exercising voting
14 rights" -- so if there was any default, JGB
15 could take ownership of shares and exercise
16 voting rights?

17 A. Right. The idea was --

18 Q. So the --

19 A. The idea here was of this equity
20 piece was not economic, it was control. It
21 was that we would -- my presumption here is
22 when someone talks about "stock powers with
23 medallion guarantees" over a company, what
24 this means is, we -- we would -- this would
25 facilitate foreclosure if they defaulted on

↑

35

1 Brett Cohen

2 us.

3 Q. So under this scenario, you had --
4 if there was a default, you would take
5 ownership of shares and exercise voting

6 rights and control of the company, correct?

7 A. We would, I think, control the
8 Brickchurch board decisions. I think that
9 was -- my surmise is that was the notion
10 here. Again, I am just trying to
11 differentiate -- hold on.

12 Q. And so under the premises you
13 loaned -- go ahead, if -- were you finishing
14 a sentence?

15 A. So this isn't us owning equity in
16 the properties. This is us controlling the
17 board, in case there was a further default.
18 Do you understand the distinction I'm making?

19 Q. You can control the board and based
20 on the one e-mail where you, you know,
21 inquired as a transfer in title, with control
22 of the company, and control of the board, you
23 could, if you wanted, transfer title to JGB
24 upon default, correct?

25 A. Don't know. I am not sure that

↑

36

1 Brett Cohen

2 that's how it works. But this was meant --
3 this was, to my recollection, meant for us to

4 be able to avoid a protracted process. It's
5 not an economic -- there's no economic
6 benefit, other than control of voting rights
7 of the board.

8 Q. And you wanted control of the
9 voting rights of the board in May of 2019,
10 and then in July of 2019, you were asking
11 about transfer of title, correct?

12 MR. KANOWITZ: Objection to
13 form; you can answer.

14 A. No, I wouldn't say I wanted it. I
15 would say this was something we were
16 discussing with them, and I don't know that
17 it was responded to. So, no, what I really
18 wanted was to have my loan paid off. That's
19 what I wanted.

20 Q. Okay. So we're going to move over
21 to an Excel spreadsheet, so this document
22 also was produced during the discovery,
23 produced by JGB, and it's a spreadsheet, and
24 it's titled "Broker Outreach," and could you
25 tell -- tell us what this document is?

↑

2 MR. KANOWITZ: Camisha, I
3 don't see it on my screen.

4 MS. SIMMONS: You don't see
5 the Excel spreadsheet?

6 MR. KANOWITZ: You are not
7 clicked on it. Mine is still on
8 May 28th e-mail.

9 MS. SIMMONS: Let me see.
10 Is it showing because --

11 MR. KANOWITZ: No, all we
12 see, at least, on my screen, is the
13 May 28th, 2019, e-mail.

14 MS. SIMMONS: I wonder if it
15 doesn't recognize -- let me...

16 MR. KANOWITZ: I don't know
17 if it's in pdf form, if not, maybe
18 it won't recognize.

19 MS. SIMMONS: It's not in
20 pdf form and that's probably why
21 it's not recognizing it. So...

22 THE WITNESS: Do you want to
23 just describe it?

24 Q. Yeah, so there's an Excel spread
25 sheet and it's titled "Broker Outreach and



1 Brett Cohen

2 notes," and it was produced by JGB, and
3 there's a list of name of brokers on the
4 broker -- on the spreadsheet, and it notates
5 a March 1st, "3/1 update." So it appears
6 that there's this list of brokers, Erika
7 Grossman, Vincent Horasetus, Emma Herman, Pat
8 Parelo, and Tim Davis.

9 And so it appears that there was
10 some sort of broker outreach, and this Excel
11 spreadsheet references the 366 property.
12 It's -- there's a notation in there that
13 says, She brokered the deal when Louis bought
14 the house for 15 in 1998. She just closed a
15 deal at 328 Gin Lane for 31 million. This
16 was 2.5 acres and 2,500 square feet. These
17 two parcels being separate is good for a fire
18 sale. Right now she would list the pair at
19 80 million. If the list -- it's listed
20 around 40 million for main house, low 30s for
21 guest house. Guest, rock bottom for 30
22 million for main house. 25 million for guest
23 house." So it appears from the spreadsheet
24 that JGB was reaching out to brokers and

25 specifically with respect to Gin Lane.

↑

39

1 Brett Cohen

2 Do you know why JGB was doing that?

3 MR. KANOWITZ: Objection to
4 form. You can answer the question.

5 A. Why, when we had a large investment
6 in a property that had defaulted, were we
7 talking to experts about what it might be
8 worth? Because we're investors who are not
9 incompetent.

10 Q. And why would -- do you think there
11 was a notation regarding a "fire sale" on Gin
12 Lane -- on this -- on the Gin Lane property?

13 A. Not for the reason that I think you
14 were thinking. We always ask -- our job as a
15 lender is to think of what is a bad case
16 scenario. So my guess is, since I don't
17 recognize any of the names you're mentioning,
18 except maybe the last one, was it Tim Grant
19 or something like that?

20 Q. Tim Davis.

21 A. Yeah, so other than that, I don't
22 recognize any of the names. And one thing we

23 do in analysis in their lives is keep
24 apprised of the value of our investments. So
25 I am fairly confident that that's what was

↑

40

1 Brett Cohen
2 being done. And why a notation to what would
3 be a bad price, because we're lenders. So we
4 want to know what a bad case scenario is.
5 When you started off this deposition, you
6 asked me what our criteria were, which were,
7 oh, we want to be covered. We want to know
8 if we are covered in a bad case scenario. So
9 in every -- in many analysis that we do here,
10 either before making an investment or while
11 we are monitoring, we say, "Well, what's best
12 case scenario? What's a fire sale case?" We
13 need to know what our downside is.

14 Q. And do you do this for any of your
15 -- what -- when do you use broker outreach or
16 do a broker outreach in your -- in JGB's
17 business operations or business model?

18 A. Very frequently. I would say -- I
19 would say -- hold on, let me just finish. I
20 would say, in every instance that I can ever

21 think of, in nearly every instance I can ever
22 think of where real estate is collateral for
23 a loan, we reach out to brokers before,
24 during, and after making an investment, and
25 as would, I think, any other professional

↑

41

1 Brett Cohen

2 investor.

3 Q. And when you reach out to these
4 brokers, what are you -- what are you asking
5 them?

6 A. "Hey, what's this place worth?
7 What are other places worth? What are the
8 comps going for? What would happen in a bad
9 case scenario?" That's, again, what we and
10 every other professional investor who has
11 real estate collateral, that I know of,
12 that's competent, does.

13 Q. And do you, JGB, or any of your
14 analysts go out to the properties and inspect
15 them near sales?

16 A. Always. You are talking about when
17 we're -- when they are an investment property
18 of ours?

19 Q. Yes.

20 A. Always.

21 Q. And so do you also send appraisers
22 out to value the property?

23 A. Periodically.

24 Q. So you do your own inspections, you
25 periodically send out appraisers --

↑

42

1 Brett Cohen

2 A. We talk to brokers.

3 Q. So why do you need to talk to
4 brokers about value, when you have your own
5 inspections, and your own appraisers?

6 A. Oh, we have a view that -- we have
7 a skeptical view of appraisers. And we
8 believe that the closer you get to people who
9 are actually transacting the better
10 information one gets, and I would think that
11 nearly every successful firm in my business
12 has the same view. So we like to talk to the
13 people who actually transact, as well as the
14 people who just opine.

15 Q. So you said you have a skeptical
16 view of appraisers. So have you reviewed the

17 FTI appraisal report?

18 A. I have not.

19 Q. Have you been informed about the

20 FTI appraisal report?

21 A. I have heard it discussed.

22 Q. And do you know the conclusions

23 under that report?

24 A. Sitting right here, I don't.

25 Q. Do you know who the appraiser was

↑

43

1 Brett Cohen

2 for that report?

3 A. FTI.

4 Q. Do you know the employee of FTI
5 that went out and conducted the appraisal?

6 A. I think it starts with an "H."

7 Q. You think it starts with an "H"?

8 A. Yeah, I think his name started with
9 an "H." Danic? That's not with an "H."
10 Hanock. Danic. I am not sure.

11 Q. I will represent it's Mark Dunec,
12 the managing director of FTI.

13 A. I accept -- I accept that.

14 Q. And so this appraisal report, there

15 are communications that JGB provided --
16 provided Brickchurch that shows that FTI
17 reached out to Michaela Keszler to get data
18 to -- with respect to in the process of
19 putting together the report.

20 Do you know how Michaela Keszler
21 came into contact with FTI?

22 A. I don't.

23 Q. And --

24 A. I mean, maybe they used a
25 telephone.

↑

44

1 Brett Cohen

2 Q. Do you -- let's back up.

3 Do you know Michaela Keszler?

4 A. How do you mean?

5 Q. Have you ever met Michaela Keszler?

6 A. I don't know if I have ever
7 physically met her.

8 Q. Have you ever spoken -- spoken to
9 Michaela Keszler over the phone?

10 A. I have, yeah.

11 Q. Have you ever communicated with
12 Michaela Keszler through e-mail, or any other

13 electronic communication?

14 A. I am not sure if I have, but
15 definitely the firm has. I think -- I think
16 Hunter for sure did.

17 Q. And what is Michaela Keszler's
18 relationship to the firm?

19 A. Well, after your client -- after
20 the foreclosure was granted -- this is to the
21 best of my recollection. So after
22 foreclosure was granted at the State Court,
23 it became apparent that, you know, an auction
24 was going to be coming up, and indeed it did,
25 and I think that we hired her, in relation to

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45

1 Brett Cohen

2 that, to what we thought would be, before
3 your client filed for bankruptcy, what we
4 thought would be an upcoming auction.

5 Q. And so the first -- had you ever
6 hired Michaela Keszler in the past?

7 A. I don't believe so.

8 Q. So she had a preexisting
9 relationship with your firm through some --
10 someone at the firm; is that correct?

11 A. I -- I -- I -- I don't -- I don't
12 think so. It's possible, but that's
13 surprising to me. I think -- no, I don't
14 think we had -- to the best of my
15 recollection, we did not have a preexisting
16 relationship with -- are you saying before we
17 hired her in connection with the foreclosure
18 auction? No, I don't believe we had a
19 preexisting relationship with her.

20 Q. And so for the auction, was it ---
21 when did you hire her? Do you recall when
22 you hired her for the work on the auction?

23 A. I don't recall, and they tell you
24 not to make guesses, but my guess is, in
25 2022. You know, on -- sometime before the

↑

46

1 Brett Cohen

2 auction.

3 Q. And what was her role with respect
4 to the auction?

5 A. To the best of my recollection, to
6 help find buyers. We didn't want nobody to
7 show up at the courthouse steps. Contrary to
8 your insinuations, we didn't want to just end

9 up with the property. We wanted someone to
10 buy it. The thing that we always wanted was
11 just to be paid off our debt. And we -- so
12 we didn't want to have a failed auction. So
13 I think, to the best of my recollection, we
14 hired her to help get interest, to help get
15 good prices for the auction. We were -- we
16 were indirectly helping your client, I think.

17 Q. And, you know, there was no
18 auction, correct?

19 A. Your client filed for bankruptcy on
20 the Saturday before, correct.

21 Q. Uh-huh. And so Ms. Keszler was
22 supposed to assist you with an auction of the
23 property outside of bankruptcy, and then, you
24 know -- correct?

25 A. Yes, we -- to the best of my

↑

47

1 Brett Cohen
2 recollection, she -- what we wanted was, you
3 know, what we didn't want was for nobody to
4 show up, or nobody to know about this
5 auction, which as an on the side, goes
6 contrary to a lot of what you are

7 insinuating, but -- so we hired her to
8 publicize it, try to find buyers. That's --
9 that's my recollection.

10 Q. And she was being compensated, you
11 know, to find buyers for the auction outside
12 of bankruptcy?

13 A. Yeah, she's not working as a broker
14 pro bono, no. She's expecting to be -- and I
15 haven't met many not-for-profit real estate
16 brokers.

17 Q. And, then, Ms. Michaela Keszler
18 reemerges or reappears to assist FTI with its
19 appraisal in the bankruptcy?

20 MR. KANOWITZ: Objection to
21 form; you can answer.

22 A. No idea. But I wouldn't be -- I
23 mean, I would say kudos to FTI if they
24 reached out to her. I mean, she is -- I
25 think one reason we hired her is we felt she

↑

48

1 Brett Cohen
2 was knowledgeable in the area, and so if FTI
3 reached out to her, you know, amongst other
4 people they reached out to in their

5 determination of value, I would say, kudos to
6 them.

7 Q. Are you aware that Michaela Keszler
8 put in offers on the property in 2019, as a
9 broker?

10 A. She put in offers for herself or as
11 an intermediary for someone else?

12 Q. As an intermediary.

13 Are you aware that she put in
14 offers as an intermediary on the property in
15 2019?

16 A. That -- that may have been a fact I
17 knew. I presently don't recall that, but it
18 doesn't surprise me, and I think that that
19 speaks well to her. So she's well situated
20 to find buyers and knowledgeable about the
21 area. I think that's -- that sounds --
22 sounds like a positive to me.

23 Q. Okay. So Michaela Keszler has put
24 in offers at the properties. There were
25 offers in 2019. Michaela Keszler has -- was

↑

49

1 Brett Cohen

2 going to be compensated -- was going to be

3 compensated by JGB to find buyers for the
4 auction that was going to occur if there was
5 not a bankruptcy, and then Michaela Keszler
6 assists FTI with its appraisal of the
7 property, 366 Gin Lane, and 376 Gin Lane
8 during the bankruptcy proceeding?

9 A. Yes, what you are describing --
10 what you are describing is someone who sounds
11 like a reasonably competent and knowledgeable
12 broker, someone who had had offers on a
13 place, someone who, because she was well
14 situated, was hired to help draw up interest
15 on a place, and then someone who was
16 consulted on valuation for a place. Sounds
17 like all -- you know, makes sense to me.

18 Q. So you don't believe there was a
19 conflict of interest to have -- have an
20 interest in auction taking place outside of
21 bankruptcy, and --

22 MR. KANOWITZ: Objection to
23 form. Sorry go --

24 MS. SIMMONS: I didn't
25 finish my question, right?

↑

1 Brett Cohen

2 MR. KANOWITZ: Camisha,
3 you're rambling questions. You did
4 this last deposition. And I have
5 let you try to do this again this
6 deposition without interfering.
7 But you can't keep stringing these
8 objectionable questions without me
9 objecting. Sorry I interrupted
10 you. I thought you were done. But
11 continue, and I will object to form
12 when you are done.

13 Q. Do you believe Michaela Keszler had
14 a conflict of interest when she assisted with
15 the appraisal report?

16 MR. KANOWITZ: Objection to
17 form; you can answer.

18 A. No.

19 MR. KANOWITZ: Can we just
20 take a five-minute break? We've
21 been going for a little bit over
22 than an hour. I just need a break
23 for five minutes.

24 MS. SIMMONS: Sure.

25 THE WITNESS: Okay.

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1 Brett Cohen

2 MR. KANOWITZ: Come back at

3 3:25?

4 MS. SIMMONS: Yes.

5 MR. KANOWITZ: Okay, great.

6 (Whereupon, a recess was
7 taken at this time.)

8 BY MS. SIMMONS:

9 Q. So we were speaking of the FTI
10 appraisal. And are you aware of the results
11 of the FTI appraisal?

12 A. No.

13 Q. Do you -- I will represent that the
14 appraiser valued 366 Gin Lane at 40 million.

15 A. Oh, okay.

16 Q. And do you believe that's the
17 correct valuation?

18 MR. KANOWITZ: Objection to
19 form. You could answer.

20 A. If someone were going to ask me my
21 guess, that would have been my guess, would
22 be 40. That said, the ultimate determinant
23 is Mr. Market.

24 Q. And if that amount, 40 million, was
25 accepted, what's the current -- what do you

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52

1 Brett Cohen
2 believe or what's your position on what's
3 currently owed to JGB under the loan?

4 MR. KANOWITZ: Objection to
5 form. You can answer.

6 A. Some months ago, I think when your
7 client filed, it was in the order of
8 magnitude of \$43 million, and I think that
9 there's some -- yeah, I presume there's
10 interest accruing. So if you said in the low
11 40s, you know, more than -- more than, and
12 this is just -- this is not binding in any
13 respect, this is just my -- you asked me what
14 I thought it was, you know, 43 to 45 million,
15 but please, you know, take -- I am not
16 calculating, you know, the daily accrual of
17 interest.

18 Q. And so the FTI valuation of 40
19 million is below that ballpark amount that
20 you just gave?

21 MR. KANOWITZ: We'll

22 stipulate to that.

23 Q. And are you -- do you know that --
24 Mr. Cohen, that under secured creditors are
25 not entitled to post petition interest on

↑

53

1 Brett Cohen

2 their claims in bankruptcy?

3 MR. KANOWITZ: Objection to
4 form, and you're asking for a legal
5 conclusion, but you can answer if
6 you have knowledge.

7 A. I think in this case, and I am not
8 a real live lawyer, I mean, I went to law
9 school, but I mean we also have a second lien
10 in 376, so based on a nuanced discussion than
11 the way -- to my mind, in the way you are
12 setting it out.

13 Q. So tell me about your second lien
14 in 376.

15 A. Yeah, so we -- there's a first
16 mortgage there, and, you know, in -- in the
17 order of magnitude of \$51 million, and our
18 loan is a first lien against 366, and a
19 second lien against 376.

20 Q. So would you say you are over
21 secured with both liens?

22 A. I guess it depends how long it --
23 in part, it depends how long this process
24 drags on, right? I mean once upon a time
25 this was, I don't know, something like \$26

↑

54

1 Brett Cohen
2 million, and now it's 43. If we're here X
3 years from now, I hope we're not, so I mean,
4 yeah, so I think it depends on -- I mean, in
5 part, on timing.

6 Q. As of today, do you -- are you over
7 secured?

8 MR. KANOWITZ: Objection to
9 form. Calls for a legal
10 conclusion. You can answer, if you
11 know.

12 A. I think we'll be repaid our debt,
13 what we're owed.

14 Q. And why do you believe that?

15 A. I think if you have the -- a value
16 today of 366, plus, I guess, the
17 non-bankrupt, you know, it's not part of the

18 bankruptcy estate, but 376, I think that
19 there's probably -- yeah, I think there's --
20 listen, if 366 is worth \$40 million, as long
21 as 376 is worth more than \$20 million, we
22 should be -- we should be good. So, yeah, I
23 think -- I think -- I don't know for sure,
24 but -- I certainly don't know for sure, but
25 yeah, it would be my guess.

↑

55

1 Brett Cohen

2 Q. It would be your guess that you are
3 currently -- the value of your collateral
4 currently exceeds the outstanding balance of
5 the loan?

6 A. Yes. I don't know.

7 Q. Okay.

8 A. And that's -- but, again, to be
9 clear, that's including the second lien in
10 376.

11 Q. Okay. Let's talk about Chris
12 Brown. Do you know Chris Brown?

13 A. I have -- I have dealt with him
14 over the years, yeah. I know him. I mean,
15 we're not -- it's not someone I am close

16 with. I don't think I have seen him -- I
17 don't think I have seen him in twenty years.

18 Q. You haven't seen him in twenty
19 years?

20 A. I don't believe so, no.

21 Q. And when was the last time you
22 communicated with him?

23 A. He likes to communicate with me
24 about Gin Lane. So he -- he asks me for
25 updates, and he knew it was any this and any

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56

1 Brett Cohen

2 that, and I guess he was a renter there last
3 summer.

4 Q. And so you are aware that he rented
5 366 Gin Lane?

6 A. I am.

7 Q. Did he ever make any inquiries on
8 purchasing 366 Gin Lane when he has been
9 communicating with you?

10 A. Yes.

11 Q. And do you recall what he has been
12 -- what he has asked you regarding the
13 property?

14 A. Yeah, he...there was a time many
15 moons ago when he was considering buying our
16 note, and then he wasn't willing -- he
17 ultimately wasn't willing to do that, and
18 that fell apart a year or two ago. So he
19 communicated with us on that. But he had
20 made an offer to buy our note, and then from
21 the best of my understanding, you know, if --
22 if his representations are to be believed, he
23 wanted to -- he wanted to be present if there
24 was an auction. So, he -- the main thing he
25 asked me, is there going to be an auction,

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1 Brett Cohen
2 when is there going to be an auction, any
3 progress with the auction? That's really the
4 majority of what he reached out to me on.
5 Q. Okay. I am going to share another
6 document. So I guess you said you have been
7 communicating with him over the years, and I
8 guess that includes text messages. This is
9 -- these are some text messages that were
10 produced by JGB in the discovery and during
11 this litigation.

12 Do you recall texting back and
13 forth with Mr. Brown?

14 A. Yes.

15 Q. And it appears from this line of
16 questioning, that he was looking for you to
17 finance his purchase with 23 million down,
18 and seventy-five days later, 11 million?

19 A. I think you have it opposite. Just
20 looking at this, I think he was suggesting
21 buying our paper for, it looks like here, \$34
22 million, with \$23 million down upfront, and
23 \$11 million down later. I wouldn't say that
24 that's us financing, you know, I would just
25 say that's his purchasing our paper.

↑

58

1 Brett Cohen

2 Q. So he was purchasing your paper in
3 installments?

4 A. Well, he wasn't purchasing it. We
5 were discussing it. I mean, we're a market
6 business. We -- every investment we have, we
7 will always talk to people about -- if they
8 want to buy it, I mean, we are fiduciaries,
9 we really have to listen to what people say.

10 Q. And do you recall Ms. Blouin
11 approaching you about financing with Reil
12 Bank?

13 A. Reil Bank, the one that was --
14 where the -- the two founders were indicted
15 multiple times for fraud, that one? Yeah, I
16 do recall that.

17 Q. And --

18 A. That wasn't a real -- and the thing
19 that had an unsigned draft stuff on the -- on
20 what we saw, and also required -- had no
21 interest rate stated.

22 Q. Yeah, so here it is, the draft you
23 are referring to, the unsigned draft.

24 A. Yeah, yeah.

25 Q. And you thought this was not real?

↑

59

1 Brett Cohen

2 A. Correct.

3 Q. And why did you not think it was
4 real?

5 A. Well, the two founders of the bank
6 were felons. We never heard of the bank
7 before. If you go to the bottom of it, it

8 says "draft," and it's all unsigned. It
9 doesn't have a stated interest rate. It
10 requires Ms. Blouin, by recollection, to pay
11 \$162,500 to them. It doesn't say what we
12 would be repaid. It merely says what they
13 would loan her. And if you go up, back to
14 the body of the agreement, further --
15 further, you may have missed it, but, yeah,
16 so on top of the -- debited against the \$32
17 million that they were talking about lending
18 her, they were asking her first and foremost
19 and she was asking us to deposit \$20 million
20 in a bank account for them. I don't know if
21 you are familiar with that. It was the most
22 ridiculous illegitimate joke I can recall
23 seeing as a professional investor.

24 Q. So what investigation did you or
25 JGB conduct into Reil Bank?

↑

60

1 Brett Cohen

2 A. I don't recall, but if you go, as I
3 presume you have, you seem like you are
4 diligent, if you pull them up you will see
5 that they were -- two founders were indicted

6 for fraud, tax stuff, hiding assets, bad
7 stuff, father and son Reil. Next, you will
8 see that this is an unsigned term sheet.
9 Next, you will see that it doesn't propose
10 how much it's going to pay us back, but they
11 wanted us to pay \$20 million to them. Sort
12 of like the Nigerian schemes where they call
13 you up and you have to deposit money and then
14 they'll give you lots of money. So it was
15 not a serious or close to serious proposal.
16 It was rise able.

17 Q. Did you ever call the bank?

18 A. We didn't call them, but to the
19 best of my recollection, Ms. Blouin asked us
20 to get on the phone with them, and we did.
21 We asked them if they had a legal commitment
22 to loan, they said, no. Then, they said, we,
23 the people who were being paid off, had to
24 pay -- I think it was \$20 million, first, and
25 then they would take care of us later. And

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1 Brett Cohen
2 so we said, you know, with -- with payoffs
3 like this, thanks, but no thanks. And then

4 if you look through this, I mean, this is by
5 my recollection from a few years ago, again,
6 it didn't say what we would even be paid off,
7 it didn't have an interest rate. It just
8 seemed like -- let me also take a step back
9 and say, in the mortgage refinance business,
10 it's not the norm or our obligation to talk
11 to potential refinancing lenders. What
12 happens in the vast, vast majority of the
13 time, someone decides to lend to one of our
14 borrowers, and someone says, "Give us a
15 payoff letter." And we give a payoff letter.
16 Period, end of story. There's no obligation
17 or norm for us to hold hands, sing Kumbaya,
18 get on fourteen phone calls with, you know,
19 every potential lender who a borrower has,
20 particularly when everything the borrower has
21 said has been not in touch with reality. So
22 the way it works is, people make a commitment
23 to lend a borrower money, someone asks us for
24 a payoff letter, and we're done. And that's
25 what we've wanted here from the very

↑

2 beginning, and continue to want. If -- if
3 your client can refinance this out, we'd be
4 thrilled to do it.

5 Q. And Ms. Blouin did ask for the
6 payoff amount with respect to Reil?

7 A. Okay. That's easy for her to
8 calculate. Did she have a formal commitment
9 from them?

10 Q. But you assumed she just asked for
11 -- she asked for the payoff amount and you
12 came to the conclusion that Reil -- the Reil
13 deal was not real.

14 A. Well, when she was talking to us
15 she said, you have to take 50 percent of the
16 money owed, or 25 percent of the money owed,
17 or 60 percent of the money owed, the world
18 has changed, things are bad -- we
19 certainly --

20 Q. And attached to this agreement is
21 actually an invoice from the firm that did
22 the work on this loan transaction, and do you
23 believe that this is also fake, an invoice a
24 from a firm, Phillips Nizer?

25 MR. KANOWITZ: Objection to



1 Brett Cohen

2 form; you can answer.

3 A. Are you saying do I doubt that
4 someone did legal work on this for Ms.
5 Blouin? I doubt that she paid them. But I
6 don't doubt that someone did legal work, no.
7 That's perfectly possible.

8 Q. But you assumed that this was not
9 real?

10 MR. KANOWITZ: Objection to
11 form; you can answer.

12 A. I think the fact that it was an
13 unsigned term sheet, from a bank where the
14 two founders had been indicted, that required
15 us to invest \$20 million before we got money
16 out, that charged her \$162,000 for the
17 privilege of them looking at it, that didn't
18 have an interest rate, that didn't state what
19 we would get paid off, yeah. If there's
20 someone who thinks that that is real, I would
21 be very curious to meet them. They would not
22 be a professional investor.

23 Q. And do you have any e-mails or
24 other communications that document that 20

25 million request from Reil?

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1 Brett Cohen

2 A. Oh, you have that. If you just --
3 if you just scroll up, I am sure you read it,
4 but I will just point you to it. Okay, so if
5 we just slowly -- "as part of the private
6 banking relationship between the guarantor
7 and the bank, the guarantor undertakes to
8 deposit on the guarantor account, a minimum
9 amount of \$20 million, prior to the
10 disbursement date."

11 Q. So you are telling -- so JGB was
12 the guarantor?

13 A. No, but I could -- when -- to the
14 best of my recollection, when we got on the
15 phone with them, they wanted us to put this
16 money in as a precondition to some craziness.
17 It was insane. So were we the guarantors,
18 no. And on top of that, did Ms. Blouin have
19 \$20 million sitting around?

20 Q. So under this -- the evidence that
21 you said reflects that the 20 million -- they
22 requested 20 million from you was in this

23 agreement, and under this paragraph it says,
24 the guarantor was to deposit 20 million, so
25 then JGB must the guarantor.

↑

65

1 Brett Cohen

2 A. No.

3 MR. KANOWITZ: Objection to
4 form. You can answer the question.

5 A. I am saying that when this was
6 brought up, and Ms. Blouin spoke about it
7 with us, she said that we would have to put
8 that money, and then we laughed.

9 Q. And so you said Ms. Blouin -- what
10 if Ms. Blouin says that she never spoke to
11 you about -- and told you about this 20
12 million?

13 MR. KANOWITZ: Objection to
14 form; you can answer, if you
15 understand it.

16 A. Yeah, the best of my recollection
17 is we were told that we needed to put that
18 in. And second of all, she didn't have \$20
19 million, or 10, or 5.

20 Q. And how do you know that she didn't

21 have 20 million?

22 A. Well, the fact that she wasn't
23 paying her water bills, her insurance, her
24 lawyers, her groundkeepers, her brokers, the
25 other lender, her employees, us, that's a

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66

1 Brett Cohen

2 good starting indication that she didn't have
3 a lot of liquid capital around.

4 Q. And are you -- do you know that
5 this deal right here, this proposal, was the
6 same financing package that Reil Bank had
7 actually transacted and closed with Ms.
8 Blouin for her Paris property?

9 MR. KANOWITZ: Objection to
10 form; you can answer.

11 A. It was literally this exact same
12 agreement? They loaned her money on a Paris
13 property based on a place in Southampton?

14 Q. They -- they -- this was a loan --
15 on her Paris property, this was the loan with
16 the same term that they did for her for the
17 Paris property; were you aware?

18 MR. KANOWITZ: Objection to

19 form; you can answer. Facts not in
20 evidence. You can answer.

21 A. No idea, and it's not relevant to
22 me. If -- if she wants to come -- if at any
23 time she wants to come to me with a pay -- to
24 pay us off, we're very happy to be paid off.
25 We always have been.

↑

67

1 Brett Cohen

2 Q. Okay. So let's go to another
3 e-mail. This e-mail is dated May 31st, 2019.
4 It's from Ms. Blouin to you. No subject. So
5 I will scroll slowly.

6 A. Okay.

7 Q. And she's telling you that she's
8 putting 366 on the market for 59 million.

9 A. 59 million. Okay.

10 Q. And your response in another e-mail
11 to her was to "Please direct communication to
12 our counsel. The below doesn't work for us."

13 A. What's "the below"? What you just
14 showed me was above. 2:50 a.m., May 31st. I
15 am not sure I follow your question. What's
16 the below?

17 Q. Okay, so, well, I guess the e-mail
18 is out of order, but if you look at the date
19 stamp, this is at 15:26, 3:26 p.m., and then
20 the other e-mail was at 2:50 a.m. on the same
21 day. So this was later in order, at 15:26,
22 3:26 p.m., and it says -- after she said, "I
23 am putting the property on the market for 59
24 million," you said, "it doesn't work for us."

25 A. I think I said, "Please direct your

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1 Brett Cohen
2 communications to our counsel." And it --
3 assuming that you are correct that this is
4 responsive to the first thing, "the below
5 doesn't work for us" -- so I don't accept,
6 first of all, that this is responsive,
7 necessarily, to the prior e-mail. But if you
8 go up to that e-mail above -- so she asked us
9 to reconsider the offer. I don't know what
10 the offer was, but perhaps I didn't want to
11 reconsider it. She asked us not to have a
12 foreclosure. I perhaps wanted to continue
13 pursuing our rights. So I am not sure what I
14 said wasn't acceptable to us, but that's

15 probably why I directed her to our counsel,
16 right. That and the fact that she accuses
17 everyone that she deals with of, like, being
18 in a conspiracy against her, right? So
19 better to have counsel deal with it.

20 Q. Okay, so at one point -- at one
21 point your attorneys said that you had never
22 contacted Morgan Stanley.

23 Are you aware of that statement?

24 MR. KANOWITZ: Objection.

25 Objection to form. You can answer.

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69

1 Brett Cohen

2 A. Yeah, I don't believe that -- I
3 don't recall I or anyone at my firm ever
4 speaking to somebody at Morgan Stanley about
5 this loan, to the best of my recollection.

6 Q. Would you be surprised that Morgan
7 Stanley informed Ms. Blouin that you tried to
8 negotiate to buy their debt on 376?

9 MR. KANOWITZ: Objection to
10 form; you can answer.

11 A. Yeah, that's -- that's false. I
12 don't have any recollection of that.

13 Q. And as a fund manager, and as a
14 lender, what are your fiduciary
15 responsibilities?

16 A. My fiduciary responsibilities are
17 to my investors.

18 Q. Do you have any disclosure
19 requirements to your borrowers?

20 A. Are you asking for a legal
21 conclusion?

22 Q. Do you have any disclosure
23 requirement that you have to make to your
24 borrowers?

25 A. As a matter of statute?

↑

70

1 Brett Cohen

2 Q. Is it your understanding, in
3 practice -- in your position and practice,
4 that you have to make certain -- make
5 disclosures to borrowers?

6 A. I have to honor our contracts, but,
7 no -- no -- no more and no less. Are you
8 asking me, do I have obligations beyond, you
9 know, the four corners of our contract? I
10 would say, certainly not. That's why we have

11 contracts.

12 Q. And so you don't -- based on that,
13 do you believe you were obligated to disclose
14 the -- your relationship to Brown and the
15 communications?

16 MR. KANOWITZ: Objection to
17 form.

18 Q. Do you believe you had an
19 obligation to disclose your relationship --
20 to disclose to Brickchurch, your relationship
21 to the renter of 366 Gin Lane?

22 MR. KANOWITZ: Objection to
23 form; you can answer.

24 A. When and why?

25 Q. When the renter began inquiring

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71

1 Brett Cohen
2 about purchasing the property, do you believe
3 you had an obligation to disclose that to the
4 borrower?

5 A. No.

6 Q. When the renter began discussions
7 with you regarding purchasing the paper, the
8 note, do you believe you had an obligation to

9 disclose that to the borrower?

10 A. No. Are you suggesting that every
11 time an investor gets a conversation, an
12 inquiry about buying a piece of paper, he has
13 to go talk to his borrower? That's
14 extraordinary. I have never heard such -- I
15 mean, that's -- that's incredible. We get
16 inquiries all day long about our loans, as
17 does every firm. If they had to go -- some
18 serious, some not serious. If -- if the
19 contract specifically holds, it would be an
20 astonishing contract. I have never seen a
21 contract like this. So if the contract said,
22 every time you get an inquiry about your
23 paper, you have to tell a borrower -- but
24 that would be absurd, and that's why it
25 doesn't exist anywhere. It's ridiculous.

↑

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1 Brett Cohen

2 Q. And do you know anyone by the name
3 of Jennifer Brennan?

4 A. Not to my knowledge, no.

5 Q. Do you know that Jennifer Brennan
6 says she was bullied by JGB?

7 MR. KANOWITZ: Objection to
8 form; you can answer.

9 A. No.

10 Q. Let's see if I have any...so it's
11 your position that you never approached JGB
12 about buying -- I mean, sorry, you never
13 approached Morgan and Stanley about buying
14 their debt at a discount?

15 A. Correct, I don't recall that.

16 Q. Do you know if any JGB employees
17 approached Morgan Stanley about buying their
18 debt at a discount?

19 A. To the best of my knowledge, nobody
20 at JGB has ever been in contact with someone
21 from Morgan Stanley about this loan, ever.

22 Q. Okay.

23 MS. SIMMONS: I think we've
24 been going for a couple of hours,
25 and if I have anymore questions, I

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73

1 Brett Cohen
2 will reserve those. So I will pass
3 the witness.

4 MR. KANOWITZ: Mr. Cohen, I

5 just have a few questions.

6 THE WITNESS: Sure.

7 CROSS-EXAMINATION BY

8 MR. KANOWITZ:

9 Q. Does JGB want to take over either
10 366 or 376 Gin Lane for its own business
11 purposes?

12 A. Absolutely not.

13 Q. Can you tell me what, if anything,
14 Gin Lane -- sorry -- JGB wants out of the
15 bankruptcy case and/or the foreclosure
16 proceeding brought by Morgan Stanley, where
17 JGB is a second lien defendant in that
18 proceeding?

19 A. We want the same thing we have
20 always wanted, which is to be paid off on our
21 debt, according to its terms.

22 MR. KANOWITZ: I have no
23 further questions.

24 Mr. Heart, do you have any
25 questions? Birmingham, sorry.

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1 Brett Cohen

2 MR. BIRMINGHAM: No, no

3 questions of this witness.

4 MS. SIMMONS: Okay, so we'll
5 take a five-minute break, and I may
6 or may not have any questions after
7 the break.

8 MR. KANOWITZ: Thank you.
9 We'll be here.

10 (Whereupon, a recess was
11 taken at this time.)

12 MS. SIMMONS: I have
13 probably a couple of questions.

14 RE-DIRECT EXAMINATION BY

15 MS. SIMMONS:

16 Q. So let me get a document up. So I
17 know you said you weren't familiar with the
18 FTI appraisal, but there's an -- here's an
19 e-mail, and it's from the appraiser, Mark
20 Dunec, and it's to Michaela Keszler, another
21 FTI employee, and then cc'd is Hunter
22 Dorbandt.

23 A. Yes.

24 Q. And so Hunter Dorbandt is with JGB,
25 correct?

↑

1 Brett Cohen

2 A. He is, yeah.

3 Q. So JGB was involved in this
4 appraisal process, and this -- in this
5 appraisal process?

6 MR. KANOWITZ: Objection to
7 form; you can answer.

8 A. I mean, we're a litigant and we
9 hired the appraiser, so, yeah, we were
10 involved.

11 Q. And did you hire Michaela Keszler?

12 A. For what?

13 Q. With her -- to assist with the
14 appraisal.

15 A. I don't believe so, but I don't
16 know.

17 Q. And do you know that FTI was paid,
18 approximately, 37,000 to conduct the
19 appraisal?

20 MR. KANOWITZ: Objection to
21 form; you can answer.

22 A. I would assume that they were not
23 acting in a pro bono capacity.

24 Q. Did JGB pay FTI 37,000,
25 approximately?

↑

76

1 Brett Cohen

2 A. I don't know, but I certainly
3 presume. We are the litigant and they are an
4 expert for us. Who else would pay them?

5 Q. And do you know that 37,000 is
6 probably -- is seven times more than normal
7 for a valuation of a property?

8 MR. KANOWITZ: Objection to
9 form; you can answer.

10 A. It's more than normal for a 22,000
11 foot, 4 acre -- well, let me ask you this:
12 Is 80 or \$100 million more than normal for an
13 average property in the U.S.? I will answer
14 my own question. Yes, it is. So I am not at
15 all surprised by that. It's an unusual
16 property. That's, you know, worth -- yes, it
17 -- a normal inspection for a \$350,000
18 property, I would expect to be a fraction of
19 the cost.

20 Q. And do you know or do you know that
21 the appraiser didn't fully inspect the 376
22 property?

23 MR. KANOWITZ: Objection to

24 form; you can answer.

25 A. No, I didn't know that, but, you

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77

1 Brett Cohen

2 know, I would be curious whether they were

3 allowed in by your client, but...

4 Q. With respect to the Reil

5 refinancing, Reil has informed -- or did

6 inform Ms. Blouin that they never talked to

7 JGB.

8 A. Yeah, I --

9 MR. KANOWITZ: Objection to

10 form; you can answer.

11 A. Yeah, I believe there was a brief
12 conversation some many years ago. I mean, it
13 was brief. I could check with Hunter. It's
14 not germane. It was -- I don't think we had
15 any obligation to speak with them. I think
16 their thing was ridiculous. I think they
17 have a bad reputation, and I think
18 notwithstanding all this, we have no
19 obligation to speak to them whatsoever --
20 that said, I think that we did have a brief
21 conversation with them, but I think it was

22 just a few minutes, a few years ago.

23 Q. And do you recall that the offer
24 Ms. Blouin provided for the Reil refinancing
25 was a total of 34.7 million?

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78

1 Brett Cohen

2 A. Absolutely not. And there was no
3 offer. There was no -- there was no binding
4 piece of paper. It was just people talking.

5 Q. So I think the offer was 32.4, and
6 then there were other amounts, and you are --
7 and you are saying there was --

8 A. There was a legally binding offer
9 for me without any contingencies? There
10 certainly wasn't.

11 MR. KANOWITZ: Camisha,
12 we've gone over this. This is not
13 redirect, based on the questions
14 that I asked. This is continuing.
15 How much more do you have? I mean
16 I will allow it.

17 MS. SIMMONS: I don't. I am
18 wrapping up now. I'm wrapping up
19 now.

20 MR. KANOWITZ: Okay.

21 MS. SIMMONS: So I think
22 this is a good stopping point, and
23 so I will wrap up now. So thank
24 you, Mr. Cohen, for your time.

25 THE WITNESS: My pleasure.

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1 Brett Cohen

2 MS. SIMMONS: If nobody has
3 any other questions, then, we can
4 conclude.

5 MR. KANOWITZ: We don't have
6 any questions now. We will use our
7 time, if any, tomorrow, for
8 rebuttal.

9 -oOo-

10 (Whereupon, the examination
11 of BRETT COHEN was adjourned at
12 4:23 p.m.)

13

14

15

16 BRETT COHEN

17

18 Subscribed and sworn to
19 before me this day
20 of , 2022.

21

22

23 NOTARY PUBLIC

24

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2 ----- I N D E X -----

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4 WITNESS EXAMINATION BY PAGE

5 BRETT COHEN

6 MS. SIMMONS 5, 74

7 MR. KANOWITZ 73

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C E R T I F I C A T E

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STATE OF NEW YORK)
 : ss.
COUNTY OF NEW YORK)

6

7

I, AYDIL M. TORRES, a Notary Public

8

within and for the State of New York, do

9

hereby certify:

10

That BRETT COHEN, the witness whose

11

deposition is hereinbefore set forth, was

12

duly sworn by me and that such deposition is

13

a true record of the testimony given by the

14 witness.

15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or marriage, and that I am in no way
18 interested in the outcome of this matter.

19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this 30th day of August, 2022.

21

22

23

24 AYDIL M. TORRES

25

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2 DEPOSITION ERRATA SHEET

3

4 Our Assignment No. J8568771

5 Case Caption: BRICKCHURCH ENTERPRISES, INC.,

6 DEBTOR.

7 DECLARATION UNDER PENALTY OF PERJURY

8 I declare under penalty of perjury

9 That I have read the entire transcript of

10 My Deposition taken in the captioned matter

11 Or the same has been read to me, and

12 The same is true and accurate, save and
13 Except for changes and/or corrections, if
14 Any, as indicated by me on the DEPOSITION
15 ERRATA SHEET hereof, with the understanding
16 That I offer these changes as if still under
17 Oath.

18 _____

19 BRETT COHEN

20 Subscribed and sworn to on the _____ day of
21 _____, 20____ before me,

22

23 _____

24 Notary Public,

25 In and for the State of _____

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2 DEPOSITION ERRATA SHEET

3 Page No.____Line No.____Change

4 to:_____

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6 Reason for

7 change:_____

8 Page No.____Line No.____Change

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22 change:_____

23 SIGNATURE:_____DATE:_____

24 BRETT COHEN

25



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2 DEPOSITION ERRATA SHEET

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22 change:_____
23 SIGNATURE:_____DATE:_____
24 BRETT COHEN
25